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June 3, 1999

DOCKET FILE COPY ORIGINAL

Hand Delivered
Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: CC Docket No. 99-169

Dear Secretary Salas:

Enclosed please find an original and seven (7) copies of the Response of Global NAPs Inc. in the above-referenced proceeding.

Please return a filed-stamped copy of this letter to me in the enclosed stamped, self-addressed envelope.

Very truly yours,

Christopher W. Savage

cc: Attached Service List

No. of Copies rec'd 0+7
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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Petition of Global NAPs, Inc. for Preemption of the Jurisdiction of the New Jersey Board of Public Utilities Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996

CC Docket No. 99-154

REPLY COMMENTS OF GLOBAL NAPS, INC.

1. Introduction and Summary.

Global NAPs, Inc. ("Global NAPs") respectfully responds to the comments on its Petition to preempt the jurisdiction of the New Jersey Board of Public Utilities (the "Board") regarding Global NAPs' interconnection dispute with Bell Atlantic-New Jersey ("Bell Atlantic").

The Board acknowledges that it has failed to complete its action with regard to Global NAPs' dispute with Bell Atlantic, despite the fact that Global NAPs' request for arbitration of the dispute was filed nearly a year ago. That fact in and of itself demonstrates the effectiveness of Bell Atlantic's strategy of using the regulatory process to delay the entry of a nettlesome competitor like Global NAPs.

The Board also states that it "expects" to act in this matter "in the very near future."[1] Global NAPs sincerely hopes that this is so. Global NAPs has no inherent interest in having its interconnection arrangements with Bell Atlantic established by this Commission, as opposed to the Board. Moreover, Global NAPs is sympathetic with the Board's difficulties in grappling with the underlying issue in this case. The fact remains, however, that in the time

[1] Comments of the New Jersey Board of Public Utilities ("Board Comments") at 3.

since this Commission issued its *Declaratory Ruling* in February 1999,[2] nearly a dozen states have issued orders in disputed cases raising that same issue, and Global NAPs cannot readily understand why the Board has been unable to do so.[3] Even so, nothing would please Global NAPs more than for the Board to do what it should have done last year, and force Bell Atlantic to abide by the Arbitrator's order in this matter.

Bell Atlantic's filing does not seriously address the question of whether the Board has fulfilled its duties under the Act. Instead, Bell Atlantic is mainly concerned with its continuing campaign to demonize Global NAPs because Global NAPs has had the audacity to identify a growing market segment that Bell Atlantic serves poorly — Internet Service Providers ("ISPs") — and to focus its competitive efforts on this market segment. Bell Atlantic, therefore, repeats its canards to the effect that providing ISPs with dial-in connections to the public switched network somehow makes Global NAPs not a real "carrier," and that Global NAPs' desire to be paid by Bell Atlantic for the work Global NAPs does at its behest somehow constitutes exploiting a "loophole" or riding a "gravy train."

This, of course, is nonsense. This Commission has repeatedly stated its view that (a) providing dial-in connections to ISPs is "really" a type of switched access, but that (b) that service is to be "treated as" a form of normal business telephone exchange service. Under the definitions in the Communications Act, a "local exchange carrier" is an entity that provides either telephone exchange service, or exchange access service. Under that definition, whether the focus is on what the service provided to ISPs "really" is, or on what that service is to be "treated as," providing that service is a function for local exchange carriers. And this Commission, along with

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[2] *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation*, CC Docket Nos. 96-98 and 99-6 *Declaratory Ruling and Notice of Proposed Rulemaking*, (rel. Feb. 26, 1999) ("*Declaratory Ruling*").

[3] By Global NAPs' count, states that have issued rulings on the question are Massachusetts, New York, Delaware, Florida, Alabama, Ohio, Missouri, Nevada, Washington, Oregon and Hawaii. In addition, the state of North Carolina has stated in formal court filings that it does not view the *Declaratory Ruling* as undermining its earlier order on the topic.

every other regulator to address the matter, recognizes that a CLEC performing this function incurs costs for which it is entitled to compensation.

MCI Worldcom, AT&T and Ameritech raise other issues that do not directly bear on the immediate jurisdictional question before the Commission. MCI Worldcom argues that Global NAPs should not have presented its dispute to the Board as an "arbitration," because Section 252(i) rights stand alone. Global NAPs agrees that Section 252(i) rights are legally distinct from negotiation/arbitration rights under Section 251(c) and Section 252(b) and may be pursued entirely separately. But those separate rights do not ***preclude*** a CLEC from presenting an existing agreement to an ILEC ***as a negotiating demand,*** and then invoking arbitration rights if that demand is not met. That is what happened here. Global NAPs would, of course, have no objection to the Commission adopting MCI WorldCom's suggestion to declare that an existing contract may be "opted into" automatically, with no need either for ILEC assent or for state commission approval of the resulting arrangement between the ILEC and the CLEC.

AT&T — recognizing the abuse to which Global NAPs has been subject at Bell Atlantic's hands — urges the Commission to establish some general rules and presumptions to make it more difficult for such abuse to occur in the future. Global NAPs has no objection to AT&T's proposals, but emphasizes again that its immediate concern is more prosaic: to obtain an order that forces Bell Atlantic to allow Global NAPs to enter the telecommunications market in New Jersey, as contemplated by the 1996 Act.

Finally, Ameritech seeks to establish as a matter of law that an opted-into agreement must terminate on the same precise date as stated in the agreement being opted into. Ameritech is wrong. That question is a matter of contract interpretation in each case. If the parties to the contract being opted into actually intended a fixed termination date, then that is what available for opting into. If the parties did not so intend, then an equivalent term contract may be available for opting in. If Ameritech or other ILECs are concerned about this point, it would not be difficult to draft contract language that limits the contract to a date certain more clearly and effectively than does the language in the contract at issue here.

2. The Board Acknowledges Its Failure To Act.

The Board does not deny that it has failed to resolve the dispute between Bell Atlantic and Global NAPs. It ascribes this failure to the parties' inability to agree on an interconnection agreement that implements the arbitrator's order; this Commission's statement in late October 1998 that an order addressing inter-carrier compensation for ISP-bound calls would be issued within "a week," followed by an actual delay of four months; and then to the fact that not even 90 days has passed since the Commission's dial-up order was in fact issued.

From Global NAPs' perspective, none of these justifications has merit. State regulators are charged under the Act with resolving the disputes between the parties within nine months of the start of negotiations, precisely so that new entrants such as Global NAPs can enter the market on state-approved terms without undue delay. And this Commission, in establishing its rules under Section 252(i), emphasized that when a new entrant is seeking to opt into an already-approved agreement, the process should be even quicker. If the law is unsettled on a particular topic as the deadline draws near, the job of a state commission under the Act is not to wait until this Commission, other state commissions, or the courts clear the matter up. To the contrary, its job is to make the best decision it can, set the terms under which the new entrant can interconnect, and let competition begin.

That said, Congress appears to have anticipated that state commissions, when confronted with a claim that they have not fulfilled their statutory duties, would want to take prompt steps to rectify the situation. From Global NAPs' perspective, one of the main functions of Section 252(e)'s provision allowing this Commission 90 days to decide what should normally be a fairly straightforward question is precisely to give state commissions one final window of opportunity to fulfill their statutory duties before being stripped of their authority over a particular dispute.

Global NAPs fully supports the Board's efforts to promptly resolve this question. The Board could easily do so by the end of June, for example, even though this Commission will

not have to finally decide whether to assume jurisdiction over this matter until early August. Global NAPs, in fact, would strongly prefer prompt action by the Board that moots the pending petition to the further delays that could easily follow a Commission decision to take responsibility for resolving this dispute, even if this Commission moves forward promptly. For this reason, while at this point the Board has not actually done anything to resolve the matter, Global NAPs essentially agrees with the Board that it would be reasonable for the Commission to base its decision on what the Board actually does over the next several weeks. Global NAPs will keep the Commission and other parties informed, by filings in this docket, of any relevant actions by the Board.

3. The Commission Should Disregard Bell Atlantic's Stale Screed Of Anti-Global NAPs, Anti-Internet, Anticompetitive Propaganda.

Bell Atlantic does not make much of an effort to defend the New Jersey Board's failure to act in the matter now before the Commission. It half-heartedly states that since Global NAPs originally chose to present the matter to the Board, Global NAPs should not be permitted to bring the matter to this Commission.[4] But that is obviously legal nonsense: the whole ***point*** of Section 252(e)(5) is to allow parties who started with a state regulator to come to this Commission if that regulator, for whatever reason, does not complete its responsibilities in a timely manner.

Instead, Bell Atlantic uses this proceeding as an opportunity to yet again attack the very legitimacy of Global NAPs' existence and operation. The essence of Bell Atlantic's argument is that there is something inappropriate about a CLEC focusing on the telecommunications needs of ISPs. Indeed, Bell Atlantic has argued in New Jersey that Global NAPs should not even be certificated as a LEC because of the fact that Global NAPs has focused

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[4] Bell Atlantic Comments at 2-3.

and will focus on serving ISPs.[5] Putting aside the blatant anticompetitive and exclusionary purpose and effect of Bell Atlantic's argument, it is plainly wrong on the merits as well.[6]

Bell Atlantic has no basis in law, economics, or regulatory policy to object to interconnecting with carriers who focus on serving ISPs and to compensating those carries for the work they do when Bell Atlantic's end users call ISPs served by those carriers. In raw economic terms, the carriers serving the ISPs are performing work which Bell Atlantic has been paid by its end users either to do, or to arrange for. Moreover, by performing that work the CLECs allow Bell Atlantic to avoid significant costs. Allowing Bell Atlantic and its end users to have a free ride on the multi-million dollar investment in switching and related gear that has been made by Global NAPs and others is the economic equivalent of declaring ISPs "off limits" to competition.

In terms of regulatory policy, while the true metaphysical and jurisdictional nature of ISP-bound traffic is ambiguous, it is absolutely certain that since 1983 this Commission has declared that ISPs may purchase connections to the public switched network on the same terms as business end users, precisely in order to allow such entities to receive local calls. In May 1997 this Commission re-affirmed its fourteen-year-old policy of treating entities such as ISPs as end users — that is, as business local exchange customers of local exchange carriers. In its order re-affirming this policy, the FCC stated that one effect of its policy was that ISPs could receive local calls from their customers:

> As a result of the decisions the Commission made in the *Access Charge Reconsideration Order* [in 1983], ***ISPs may purchase services from incumbent LECs under the same intrastate tariffs available to end users.*** ISPs may pay business line rates and the appropriate subscriber line charge, rather than interstate access rates, even for calls that appear to traverse state boundaries.[502]

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[5] Bell Atlantic Comments at 2-4.

[6] Global NAPs in fact does serve customers other than ISPs, and plans to expand its efforts to do so. But Bell Atlantic would be wrong even if Global NAPs were committed to never provide any service to anyone other than ISPs.

> [502] *ESP Exemption Order,* 3 FCC Rcd at 2631 nn. 8, 53. To maximize the number of subscribers that can reach them ***through a local call,*** most ISPs have deployed points of presence.[7]

This specific approach was affirmed in federal court, over a challenge to it by Bell Atlantic itself. In *Southwestern Bell v. FCC*), the court stated:

> ISPs subscribe to LEC facilities in order to ***receive local calls*** from customers who want to access the ISP's data, which may or may not be stored in computers outside the state in which the call was placed. An IXC, in contrast, uses the LEC facilities as an element in an end-to-end long-distance call that the IXC sells as its product to its own customers.

153 F.3d 523, 542 n.9 (8th Cir. 1998) (emphasis added). As long as this so-called access charge "exemption" remains in place, the only policy that makes sense is to treat ISP-bound calls as though they were local calls.

Bell Atlantic knew full well that such "local" treatment was the well-understood, logical implication of the Commission's policies regarding such traffic, as shown by its May 1996 Reply Comments in the *Local Competition* proceeding. Bell Atlantic explained that if the ILECs overpriced interconnection, they would be immediately punished in the market by CLECs who focused on serving customers who primarily receive calls — including, specifically, ISPs:

> [T]he notion that bill and keep is necessary to prevent LECs from demanding too high a rate reflects a fundamental misunderstanding of the market. If these rates are set too high, the result will be that new entrants, who are in a much better position to selectively market their services, ***will sign up customers whose calls are predominantly inbound,*** such as credit card authorization centers and ***internet access providers.*** The LEC would find itself writing large monthly checks to the new entrant.

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[7] In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and End User Common Line Charges, *First Report and Order,* 12 FCC Rcd 15982 (1997) at ¶ 342 & n.502 (emphasis added).

Reply Comments of Bell Atlantic, CC Docket No. 96-98 (filed May 30, 1996) (emphasis added). So not only does requiring inter-carrier compensation make economic sense in general, Bell Atlantic itself has long recognized that requiring reciprocal compensation under Section 251(b)(5) for ISP-bound calls will have a salutary effect on inter-carrier negotiations under the Telecommunications Act of 1996.

In terms of law, as the Commission found in the *Declaratory Ruling*, irrespective of the literal scope of Section 251(b)(5) obligations under current Commission rules, it is completely permissible for parties to have agreed to treat ISP-bound calls as local. *Declaratory Ruling* at ¶ 23. Moreover — in light of the economic and policy considerations just noted — the *Declaratory Ruling* recognizes that it is likely that they actually did so agree, absent some evidence in the contract of special efforts to segregate such traffic and treat it differently. *See id.* at ¶ 24. Many states have found that this is exactly what the parties actually agreed to in various individual cases — including, in Bell Atlantic's case, the Delaware Public Service Commission, interpreting a contract that is substantively identical to the one at issue here.[8]

Confronted with no plausible legal, regulatory, or economic justification for excluding Global NAPs from the market and paying Global NAPs appropriate compensation for handling ISP-bound calls, Bell Atlantic resorts to the corporate equivalent of an *ad hominem* argument: try to make Global NAPs out to be some sort of sham carrier, riding a "gravy train" and exploiting loopholes in the system.

Bell Atlantic, of course, is wrong. The public policy of the United States favors growth of the Internet and facilitation of easy public access to it. DSL and cable modem

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[8] State-level decisions on the merits supporting such a finding include those made by Delaware, Florida, Ohio, Alabama, Nevada, Oregon, Washington and Hawaii. The recent Massachusetts order that Bell Atlantic touts actually rested on a (confused and erroneous) but different legal ground. The DTE now claims that it believed itself ***compelled*** by prior FCC precedent to rule that ISP-bound calls "were" local, but that, in light of the FCC's purported ***reversal*** of prior precedent in the *Declaratory Ruling,* the DTE was freed from that compulsion. The order did not purport to resolve in any final way whether ISP-bound calls were in fact intended by the parties to the interconnection agreement at issue to be encompassed within the "local" rubric, and, indeed, directed the parties to negotiate the issue, with DTE mediation if need be. Global NAPs has already requested that the DTE help mediate its dispute with Bell Atlantic.

deployment are growing, but for the next several years dial-up will be the dominant form of residential connection, and will grow in absolute terms. That means that the local exchange industry will need to deploy a great deal of new switching equipment to accommodate that growth. Otherwise, ISPs who need dial-in lines to meet growing consumer demand will be unable to meet that demand. The public interest, along with the private businesses of the ISPs, will suffer. There is no remotely plausible basis to conclude that there is anything inappropriate about an entrepreneurial CLEC recognizing the growing demand in this market niche and deploying resources and risk capital to meet it.

For this reason, among others, Bell Atlantic's entire "gravy train" and "loophole" innuendoes simply collapse when they are examined more closely. Putting the matter charitably, Bell Atlantic appears to have confused concerns about the compensation ***rate*** and twisted them into concerns about whether compensation should be paid at all.

Under this Commission's rules, an ILEC has to pay the same amount for sending calls to CLECs that CLECs pay for sending calls to the ILEC. Thinking that they would be net receivers of calls, ILECs pushed hard for, and in some cases obtained, regulatory rulings to the effect that it really cost the ILECs $0.008 or more per minute to terminate calls. This was ***after*** this Commission had declared in the *Local Competition Order* that a reasonable proxy for local switching, particularly for large ILECs such as Bell Atlantic, was only about $0.002 per minute.[9] Assuming that this Commission's estimate was close to correct, then Bell Atlantic in Massachusetts (for example) is getting paid approximately ***four times*** its costs for traffic it receives. From this perspective, Bell Atlantic's real complaint about the "gravy train" is that — despite Bell's fervent efforts to board — Bell itself got left at the station.

But in the long run, non-cost-based rates for delivering ISP-bound traffic, or any other traffic, cannot be sustained, ***as long as the competitive market is allowed to flourish.*** Some ILECs may be extremely efficient at delivering traffic to their subscribers. They will eventually

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[9] *See* 47 C.F.R. § 51.513(c)(2)(i).

be saddled with appropriately low cost-based rates.[10] CLECs will have to be efficient indeed to survive in that economic environment. Other ILECs, however, may not be so efficient. For those ILECs, higher cost-based call termination rates will be an appropriate economic signal to CLECs enter the market, precisely to compete away from the ILECs the business of terminating calls, at which (by hypothesis) the CLECs are ***more*** efficient.

Although one could not tell it from Bell Atlantic's filing, the fact of the matter is that Global NAPs is on record at this Commission and elsewhere suggesting that an appropriate termination rate for ISP-bound calls is an analogous ILEC cost-based rate — either a TELRIC rate established for application under Section 251(b)(5) or the ILEC's applicable interstate switched access terminating local switching rate. Global NAPs is not seeking to ride any "gravy train" or to exploit any "loophole." Global NAPs is simply seeking to enter the New Jersey telecommunications market, on the same terms as other providers, to serve ISPs and others who are ill-served by Bell Atlantic's historical disdain for that and other market segments.

* * * * *

As noted at the outset of this section, Bell Atlantic actually devotes little of its filing to the matter immediately at hand, which is whether the Commission should preempt the jurisdiction of the Board in this matter. If the Board does not act promptly, as it has now stated it will, then the Commission should clearly do so. The 90-day period provided in the statute for consideration of this question gives the Board time to moot this entire matter by rendering an appropriate decision enforcing the Arbitrator's ruling on Bell Atlantic. If the Board does not do so, then for the reasons stated above and in Global NAPs' original Petition, the correct solution in this case is for the Commission to issue an order compelling Bell Atlantic to abide by the Arbitrator's ruling.

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[10] The Virginia State Corporation Commission, for example, recently ruled that Bell Atlantic's TELRIC cost of terminating a minute of traffic is between $0.001 and $0.002.

4. MCI WorldCom's Legal Analysis Is Reasonable As Far As It Goes, But Does Not Reflect The Full Scope Of CLEC "Opt-In" Rights.

MCI Worldcom argues that Global NAPs should not have presented its dispute to the Board as an "arbitration," because Section 252(i) rights stand alone.[11] Global NAPs agrees that it should not have ***had*** to present is dispute to the Board as an arbitration. It does not agree, however, that it did not have the ***right*** to present its dispute to the Board as an arbitration.

Section 252(i) rights are legally distinct from negotiation/arbitration rights under Section 251(c) and Section 252(b). Section 252(i) is that sense self-executing, in that it states that an ILEC "shall make available" an existing agreement to any requesting CLEC. For this reason, Global NAPs would have no objection to the Commission adopting MCI WorldCom's suggestion to declare that an existing contract may be "opted into" automatically, with no need either for ILEC assent or for state commission approval of the resulting arrangement between the ILEC and the new CLEC.

But Section 252(i) has broader application than that. Various subsections of Section 251(c) require the ILEC to make interconnection available on terms that are "non-discriminatory" and "in accordance with the requirements of ... section 252." *See, e.g.,* Section 251(c)(2)(D). It follows that, among other things that a CLEC might demand in the course of a negotiation, a CLEC may insist on getting "the same deal" that some other CLEC got. Nothing about the fact that Section 252(i) stands on its own remotely suggests that a CLEC may not rely on the fact that compliance with Section 252(i) is embodied in the ILECs' obligation to negotiate an agreement in good faith that complies with the requirements of Sections 251(b) and 251(c). For that reason, if an ILEC ***in the course of negotiations*** refuses to make available "the same deal" that was made available to another CLEC, that refusal creates a dispute that is subject to arbitration, precisely because it constitutes a failure to comply with Section 251(c).

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[11] MCI WorldCom Comments at 2 (arguing that Global NAPs should not have brought its dispute to the Board as an arbitration); *passim.*

Again, Global NAPs fully supports a Commission ruling that would clarify going forward that opt-in rights are fully self-executing at the option of the CLEC. But there is no basis to conclude that an ILEC's failure comply with its obligation to negotiate in good faith by the particular device of refusing to comply with Section 252(i) is not subject to arbitration as well.[12]

5. AT&T Offers Reasonable Suggestions As Well.

Like MCI WorldCom's, AT&T's comments are (appropriately) more focused on the general problem of ILEC intransigence in the face of CLEC efforts to enter the market than with the specific ways in which Global NAPs has been abused by Bell Atlantic in this matter. And like MCI WorldCom, AT&T suggests certain steps the Commission could take to alleviate this problem in the future, in New Jersey and elsewhere. Specifically, AT&T suggests that the Commission should expressly affirm that it will not hesitate to exercise its 252(e)(5) authority when a state fails to carry out its responsibilities in a timely manner, and to establish a presumption that failure to act for three months following an opt-in request or the issuance of an arbitration decision constitutes such a failure.[13]

Global NAPs has no objection to the Commission's adopting such a general rule, which would prove useful to Global NAPs and other CLECs attempting to enter a particular state's telecommunications markets.

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[12] Part of the problem here, of course, is that the rule that MCI WorldCom urges the Commission to adopt was not expressly in place at the time that Global NAPs had to make its various litigation decisions in the real world.

[13] *See* AT&T Comments, *passim*.

6. Ameritech's Proposed Rule Regarding Contract Interpretation Is Baseless.

Ameritech wants the Commission to establish a rule that any contract that contains a fixed termination date cannot be "opted into" for a period that extends beyond that fixed date.[14] There is no conceivable basis for issuing such a rule.

Consider the following two (completely hypothetical) provisions from two different (completely hypothetical) interconnection contracts:

> **Term (1).** This Agreement contains a number of specific provisions that were negotiated between the parties that reflect the fact that CLEC has not yet begun operations in the State. The parties specifically intend to give CLEC, by virtue of its new entrant status, a stable and predictable period of three years from the date upon which the contract becomes effective during which it may operate under the terms hereof. The rates, terms and conditions in this Agreement have been specifically negotiated to provide reasonable compensation to CLEC for the fact that it will not have achieved significant economies of scale in its operations, which rates, terms and conditions would not necessarily apply to CLEC after it has been operational for three years. For these reasons, this contract shall in all respects be construed as extending for a stable period of three years from the date on which it becomes effective.

As compared to:

> **Term (2).** The rates, terms and conditions of this Agreement have been negotiated in light of the specific legal, regulatory, and technological factors affecting the telecommunications industry in the State as of August 1, 1996 (the "Effective Date"). The parties expressly agree that nothing in this Agreement should be construed to constitute an agreement by either party that any such rate, term or condition will be, or will remain, reasonable in light of then-prevailing legal, regulatory, and technological conditions as of July 31, 1999 (the "Termination Date"), and the parties expressly disclaim any willingness or desire to extend any provision of this Agreement beyond the Termination Date.

It would be senseless to interpret a contract containing the first "Term" clause as anything other than an agreement that lasts for three years from the date it takes effect between the ILEC and

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[14] Ameritech Comments, *passim*.

a new entrant CLEC. It would be equally senseless to interpret a contract containing the second "Term" clause as anything other than an agreement with terms and conditions that are utterly without force and effect as of 12:01 a.m. on the day following the "Termination Date."

Most interconnection contracts in existence today are not nearly so clear on the question of term. In the case of Global NAPs' dispute with Bell Atlantic, at the arbitration proceeding and in briefing, Global NAPs meticulously demonstrated that the substantive terms of the particular contract at issue should most logically be interpreted as constituting an agreement that extends for three years from the date it takes effect as between Bell Atlantic and any particular CLEC that opts into it. The arbitrator agreed. Ameritech probably thinks that the Arbitrator erred in that regard (Bell Atlantic certainly thinks so). But whether the Arbitrator was right or wrong, he did what he was supposed to do, which is to ***interpret the contract before him***.

Ameritech or any other ILEC may insist in negotiations on a "term" clause along the lines of "Term (2)" above. Global NAPs or any other CLEC may insist in negotiations on a "term" clause along the lines of "Term (1)" above. If they cannot agree the affected state commission can resolve the matter in arbitration. There is no reason to think that this question presents any particular difficulties on a "going forward" basis.

On a retrospective basis, existing interconnection contracts say what they say and mean what they mean. When the provisions of those contracts relating to "term" are in dispute, either in the peculiar circumstances in which Global NAPs found itself or for some other reason, state commissions, this commission, and possibly other forums are available to adjudicate the dispute. It would be both inappropriate and unnecessary to pretermit the results of these fact-specific disputes over contract meaning with a general rule that states that any contract that has a separately noted "termination date" ***must be*** interpreted as though the contract contains a clause

along the lines of "Term (2)" above.[15] For these reasons, the Commission should reject Ameritech's proposal.

7. Conclusion.

The New Jersey Board acknowledges that it has not completed its action in the Bell Atlantic-Global NAPs dispute but states that it will do so shortly. Global NAPs agrees that the Commission should not act precipitously, and should consider what the Board does in the next few weeks in evaluating whether to preempt the Board's jurisdiction. Global NAPs will keep the Commission advised of developments at the Board.

Bell Atlantic offers no sound basis for the Commission not to preempt the Board. Instead, it repeats its tired old claims that CLECs should not be allowed to compete for the business of ISPs on economically comparable terms to those on which the ILECs themselves serve ISPs, and that any entity that tries to do so isn't really a "LEC" worthy of the name. This is anticompetitive nonsense, and, if it accepts this case, the Commission should expressly so rule.

MCI WorldCom and AT&T offer reasonable suggestions for improving the lot of CLECs trying to exercise their Section 252(i) rights, and Global NAPs has no objection to the Commission adopting them. Ameritech's proposal to impose a blanket rule of contract

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[15] Global NAPs suspects that Ameritech ***wishes*** that its interconnection agreements had a clause that read like "Term (2)" but is well aware that they do not, in general, contain such a clause. Even if one were to agrees with Ameritech that such a clause might be, in general, a good thing, that hardly justifies an order mandating how a material term in any number of individually-negotiated contracts around the country must be interpreted based on a particular accident of drafting.

interpretation on dozens of different, individually-negotiated agreements nationwide is absurd and should be rejected.

Respectfully submitted,

GLOBAL NAPS, INC.

By: _____

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Date: June 3, 1999

CERTIFICATE OF SERVICE

I, Linda M. Blair, hereby certify that on this 3rd day of June, 1999, I caused a copy of the foregoing Comments of Global NAPs, Inc. to be sent via messenger (*), or by Federal Express, to the following:

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